

Remarks

Claims 18-21 were pending in the subject application. By this Amendment, claim 18 has been amended. The undersigned avers that no new matter is introduced by this amendment. Entry and consideration of the amendments presented herein is respectfully requested. Accordingly, claims 18-21 are currently before the Examiner for consideration. Favorable consideration of the pending claims is respectfully requested.

Claims 18-21 have been rejected under 35 U.S.C. § 112, second paragraph, as indefinite. The applicants respectfully submit that the recitation of "at least about" with respect to the duration of the first growing period does not render claims 18-21 indefinite. However, in order to expedite prosecution and lend greater clarity to the claimed subject matter, claim 18 has been amended to delete the term "about". In view of the amendment to the claim, the applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, second paragraph.

Claims 18-21 have been rejected under 35 U.S.C. § 103(a) as being obvious over Heide (*Physiol. Plant* 40:21-26, 1977) in view of Darrow ("The Strawberry," 1966, Holt *et al.* pp. 355-365). The applicants respectfully traverse these grounds for rejection because the cited references, alone or in combination, do not disclose or suggest the claimed invention.

The Office Action indicates that the primary reference (the Heide publication) describes a method of inducing flowering in strawberry plants by reducing temperature and photoperiod. The Office Action acknowledges that the Heide publication does not describe growing strawberry plants at a temperature of at least 30° C; however, the applicants respectfully submit that there are additional aspects of the claimed invention that are not taught or suggested by the Heide publication or the secondary reference (the Darrow publication).

Submitted herewith is a Declaration by Dr. Craig Chandler under 37 C.F.R. §1.132 for the Examiner's consideration. As indicated by Dr. Chandler in the Declaration, the Heide publication describes experiments in which strawberry cultivars were subjected to various temperature and day-length combinations. However, as explained in Dr. Chandler's Declaration, "as shown in Figures 1-4 of the Heide publication, the experiments involved subjecting a sample of eight to ten plants to a constant temperature of 12° C, 18° C, or 24° C, for a daylight period of 10, 12, 14, 16, or 24 hours,

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depending on treatment group. Following treatment, each sample was then returned to 24° C and continuous light to observe time of flowering." As indicated in the Materials and Methods section at page 22, lines 8-9, of the Heide publication, "temperature fluctuations were usually kept within $\pm 0.5^\circ$ C." As explained by Dr. Chandler, in the experiments conducted in the Heide publication, "different plant samples were subjected to a constant temperature (12° C, 14° C, or 24° C) for a particular daylight period (10, 12, 14, 16, or 24 hours), depending on each particular sample's treatment regimen. The effect of reducing the daytime temperature for a particular plant (or sample of plants) from one growing period to the next growing period was not evaluated." Thus, there is nothing within the Heide publication to suggest that strawberry plants can be induced to flower by abruptly reducing the daytime temperature in a subsequent growing period, as recited in the claims.

Furthermore, the Darrow publication only indicates that strawberry plants can be grown within a wide variety of temperatures. The Darrow publication does not suggest abruptly reducing the daytime temperature of strawberry plants between growing periods. Therefore, it does not cure the defects of the primary reference. There is no suggestion or motivation in the prior art that would lead a person skilled in the art to arrive at the invention.

Assuming *arguendo* that the experimental data in the Heide publication suggests that further experimentation should be conducted to evaluate the effect of abruptly reducing the daytime temperature in a subsequent growing period, which it does not, it is well settled that "obvious to try" is not an appropriate standard for making a *prima facie* case of obviousness. As the Examiner is undoubtedly aware, it is well established in patent law that in order to support a *prima facie* case of obviousness, a person of ordinary skill in the art must find both the suggestion of the claimed invention, and a reasonable expectation of success in making and practicing the invention, in light of the teachings of the prior art. *In re Dow Chemical Co.*, 5 U.S.P.Q. 2d 1529, 1531, (Fed. Cir. 1988). There is nothing in the cited references that provides a reasonable expectation of success in inducing flowering of strawberry plants by growing them for a first growing period of at least six weeks at a daytime temperature reaching at least 30° C and reducing the daytime temperature in a second growing period to less than 20° C. In view of the foregoing remarks and the Declaration submitted herewith, reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a) is respectfully requested.

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In view of the foregoing remarks and amendments to the claims, the applicants believe that the currently pending claims are in condition for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16 or 1.17 as required by this paper to Deposit Account 19-0065.

The applicants invite the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,



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Attachments: Petition and Fee for Extension of Time
Marked-Up Version of Amended Claims
Associate Power of Attorney
Declaration by Dr. Chandler under 37 C.F.R. §1.132

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Marked-Up Version of Amended Claims**Claim 18 (amended):**

A method for inducing flowering of strawberry plants wherein said strawberry plants are grown in a controlled-temperature environment; wherein said method comprises growing said strawberry plants for a first growing period of at least [about] six weeks at a daytime temperature which reaches at least 30° C, and wherein said daytime temperature is reduced during a second growing period, after said first growing period, to less than 20° C.